THE HONOURABLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION No.7538 OF 2007

DATED: 03.12.2007

Between:

M/s Laxmi Srinivas Rice Mill, rep. by its Managing Partner, Achhyuta Ramchandra Rao.

.. Petitioner

And

The State Bank of India, rep. by its Chief General Manager, Hyderabad Circle, Hyderabad and others.

.. Respondents

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WRIT PETITION No.7538 OF 2007

ORDER:

Heard Sri O.Manohar Reddy, learned counsel, representing Sri Challa Srinivas Reddy, learned counsel representing the writ petitioner and Sri M. Narendar Reddy, learned Standing Counsel representing the respondents.

2. Sri O. Manohar Reddy had taken this Court through the respective pleadings of the parties and would maintain that, having considered similar cases, the case of the writ petitioner had not been considered and, hence, the said action suffers from the vice of discrimination. The learned counsel also had taken this Court through the relevant material papers.

3. Per contra, Sri Narendar Reddy, learned Standing Counsel, had taken this Court through the contents of the counter-affidavit and would maintain that the writ petition is devoid of merit and the same is liable to be dismissed.

4. The writ petition is filed for a writ of Mandamus declaring the action of the respondents in issuing the impugned order, dated 24.03.2007, and the consequential possession notice, dated 05.04.2007, against the properties of the petitioner firm, as illegal,

arbitrary and violative of principles of natural justice.

5. In the affidavit filed in support of the writ petition, it is stated that the petitioner firm had taken overdraft from 3rd respondent Bank in the year 1991 and continued to obtain the said facility till 1997 to a total amount of Rs.21,64,276/-, and used to pay the required payments in the form of running capital to the 3rd respondent bank. It is further stated that in the year 1997, as the petitioner firm fell in losses and as the deponent, the Managing Partner of the petitioner firm, fell ill, it could not pay some amounts. It is also further stated that the bank officials had served on the petitioner firm a notice on 26.02.2003 asking it to settle the dues under R.B.I. One Time Settlement Scheme (OTS). It is also stated that in pursuance to the same, the deponent made an application on 29.04.2003 to the 3rd respondent bank stating that the petitioner firm had only utilized an amount of Rs.21,64,236/- and requested to intimate the actual initial amount that has to be paid under the One Time Settlement Scheme. Further, it is stated that the 3rd respondent issued a notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), which was issued to the petitioner on 17.05.2003, asking it to discharge the total outstanding liabilities to an amount of Rs.21,64,276/-. It is also further stated that the deponent intimated the bank officials that the very same bank had issued notice to the petitioner for OTS to settle the same, but when the matter was pending, the respondent bank officials had issued another notice on 03.09.2003 stating that time under the said OTS scheme was extended up to 30.09.2003. It is also further stated that immediately on 29.09.2003, the deponent made an application stating that he would pay Rs.21,64,276/- as One Time

Settlement under 12 monthly installments. Further it is stated that he had also again made another application on 18.10.2003 requesting to intimate the date of payment of 25% of the total amount settled under the OTS scheme, before 31.12.2003, as he was suffering with old age problems and health problems. It is further stated that in spite of intimating the same, the 2nd respondent had pressurized the deponent to pay the demanded amount and the deponent continued to request to intimate the amount that he has to pay initially. It is also further stated that the deponent was informed to pay an amount of Rs.6,25,000/- and he paid the same on 20.12.2003 and, after paying the said amount, the 3rd respondent insisted him to issue a letter in his favour stating that the petitioner firm is liable to pay an amount of Rs.18,75,000/- before 29.02.2004, otherwise it should loose the benefit under the OTS scheme, otherwise the bank would immediately auction the properties of the petitioner as per the notice issued under Section 13 (2) of the Act. It is also further stated that the 3rd respondent informed the deponent that nothing will happen if the deponent executes such a letter and it is only a formality to see that future installments of the OTS scheme will be paid regularly. It is also stated that literally the 3rd respondent has pressurized the deponent and made him to write the said letter under coercion, misrepresentation and undue influence, but, as a matter of fact, under the said OTS scheme, the deponent is liable to pay an amount of Rs.15,39,276/- (Rs.21,64,276 – 6,25,000 = 15,39,276/-) as on that date. Further, it is also stated that when things stood thus, the respondents issued the impugned letter, dated 17.05.2003, and questioning the same and challenging Section 13 of the Act, the deponent filed W.P.No.3921 of 2004 before this Court and the same was dismissed on 22.04.2004 on the aspect of validity of

Section 13 of the Act and the deponent was directed to workout his remedies as provided under the Act including filing of appeal under Section 17 of the Act, and it is further observed that in pursuance of One Time Settlement Scheme, the respondent authorities are directed to consider the same and take appropriate decision in accordance with law. It is further stated that after protracted correspondence with the respondent authorities, the 3rd respondent issued letter dated 31.03.2006 to revise the offered OTS as loan amount is approximately Rs.24.00 lakhs and the value of the mortgaged property is nearly Rs.70.00 lakhs and it s further advised to give any other offer taking into view of the value of the mortgaged property. Further, it is stated that as per the OTS scheme, the deponent is liable to pay an amount of rs.15,39,276/- as on 20.12.2003 and, taking into consideration of all the facts and the amounts paid by him, he gave revised proposal on 15.09.2006 stating that he will pay an amount of Rs.22.00 lakhs to the respondent bank and also submitted TDRs worth Rs.22.00 lakhs immediately. It is also further stated that the respondent bank addressed another letter dated 12.12.2006, which was received by the deponent on 19.12.2006, asking him to give another revised proposal as the proposal is very less according to them. Further, it is stated that on 13.02.2007, the deponent made another application offering an amount of Rs.27.00 lakhs for One Time Settlement Scheme and also submitted TDRs worth Rs.26.00 lakhs. It is also stated that the 3rd respondent addressed another letter on 24.03.2007, which was received by the deponent on 31.03.2007, intimating that it is not willing for the proposal of Rs.27.00 lakhs and further stated that the total amount due is Rs.57.00 lakhs. It is also stated by the officials of the bank that the offer is very meager and the deponent was advised to place higher offer within seven days from the receipt of the notice, or

else they will proceed against him under the Act for the total dues. It is also stated that the respondent authorities have made the deponent to believe that they are settling the matter by way of One Time Settlement and filed O.A.No.766 of 2002 for recovery of the amount. It is further stated that the very basis for the rejection of the proposal of the deponent is that the value of mortgaged properties is more than the amounts due, which is illegal, arbitrary and against the principles of natural justice and moreover the 3rd respondent issued notice, dated 31.03.2007, stating that the total amount due is Rs.24.00 lakhs and now the very same officials are saying that the total amount due is Rs.57.00 lakhs. It is also further stated that the respondents are not showing any records, statements and accounts for their claim, but are going on insisting the deponent to issue more high offers and only with a view to protect his property and due to coercion and undue influence of the respondents, the deponent made the above said high offers. Further, it is stated that as a matter of fact, when the respondents have issued proposal for One Time Settlement and when the same is in force, they are not having any right to claim more than the said OTS amount and the said high claim is illegal, arbitrary and against the principles of natural justice. It is also further stated that even as per letter dated 24.03.2007, the 2nd respondent had stated that the deponent has to give his revised offer within seven days from the date of receipt of the same, else they would proceed against him, and the said letter was received by the deponent on 31.03.2007. It is also stated that, in the meanwhile, the 2nd respondent issued possession notice under Section 8 (1) of Security Interest (Enforcement) Rules, 2002, which is illegal, arbitrary, without jurisdiction and against the principles of natural justice. It is also stated that the respondents had accepted the proposals of OTS in case of Durga Industries,

Mangalagiri, Guntur District, in which the first notice calling for One Time Settlement was issued along with the petitioner firm in the year 2003 and, accordingly, the respondents have accepted the proposal and issued second notice on 28.01.2006. But, in case of petitioner firm, even though the deponent is making several representations and in spite of an order from this Court in W.P.No.3921 of 2004, the respondents are dragging the matter on one or other pretext, which is nothing but discriminating the petitioner firm with that of similarly situated persons, which is in violation of Article 14 of the Constitution of India. It is also further stated that the action of the respondents in issuing the Possession Notice, dated 05.04.2007, ignoring all the facts and circumstances of the case and ignoring the offers made by the petitioner firm for One Time Settlement scheme, is illegal, arbitrary and in violation of Article 14 of the Constitution of India. In such circumstances, it is stated that, being left with no other option, the petitioner approached this Court praying for appropriate reliefs.

6. In the counter-affidavit filed on behalf of the respondent, which was sworn to by the Chief Manager, Authorized Officer of 2nd respondent bank, several of the allegations had been specifically denied. It is stated that the petitioner is a partnership firm, represented by its partners Sri A. Ramachander Rao, Sri A Sravan Kumar, Smt. A. Venkata Subba Lakshmi and Smt. K. Bala Umadevi, carrying on the business of trading/milling of paddy and sale of its bye products i.e. rice, broken rice, rice brawn and running of flour mill etc. Initially, on the request of the petitioner firm, the 3rd respondent Bank sanctioned during the year 1989 cash credit (mundy type) loan facilities of Rs.4 lakhs and the same were enhanced to Rs.6 lakhs during the month of March 1994 and further enhanced to Rs.20 lakhs during the month of

December 1996. The petitioner had availed the said loan facilities of Rs.20 lakhs after executing security documents on 19.12.1996 and also furnishing immovable property securities and personal guarantees of the Partners and Smt. A. Dahanalakshmi, Sri A. Sreenivasa Rao and Sri A. Pavan Kumar. Further, it is stated that as the petitioner firm committed default in repaying the loan amounts to the 3rd respondent Bank, the 3rd respondent Bank initiated recovery proceedings before the Debts Recovery Tribunal, Bangalore by filing application O.A.No.453/1998 on 08.06.1998 for recovery of a sum of Rs.23,33,912/- together with future interest and costs. The said application O.A.No.453/1998 was transferred to Debts Recovery Tribunal at Hyderabad and renumbered as O.A.No.1535/1999 and later on it was transferred to Debts Recovery Tribunal at Visakhapatnam and was renumbered as O.A.No.766/2002. Further, in reply to paragraphs 3 to 6 of the affidavit filed in support of the writ petition, it is averred in paragraph 5 of the counter-affidavit that while recovery proceedings are pending before the Debts Recovery Tribunal at Visakhapatnam, in response to the One Time Settlement Scheme announced by the Reserve Bank of India, the petitioner had given its consent for settlement of dues to the Bank under the said scheme and paid a sum of Rs.6,25,000/- on 20.12.2003, but again failed to pay the balance amount under OTS as per the stipulations and, therefore, the OTS offer was withdrawn and cancelled by the third respondent Bank. It is also stated that as the petitioner firm committed default, the proceedings were lawfully initiated under the Act by the second respondent-the authorized officer under the said Act. It is also further stated that the allegation of the petitioner that respondent No.3 insisted the petitioner to issue a letter stating that they are liable to pay an amount of Rs.18,75,000/- as on 29.03.2006 is not correct and the said

letter was issued voluntarily confirming the balance. The further allegation of the petitioner that respondent No.3 has pressurized and made the petitioner to write the letter under coercion and misrepresentation and undue influence is not correct and the said allegation is denied. Further, it is stated that the writ petition No.3921 of 2004 filed by the petitioner before this Court was dismissed giving liberty to file appeal under Section 17 of the Act, but the petitioner had failed to take any further proceedings. It is further stated that the OTS offer made during the year 2003 was withdrawn and though the petitioner was required to come forward with the settlement by improving the offer, it had failed to give reasonable offer as against the outstanding amount and, therefore, the bank further proceeded with recovery proceedings before the Debts Recovery Tribunal duly informing the payment of Rs.6,25,000/- during the pendency of the O.A. The Debts Recovery Tribunal, Visakhapatnam, after examining the matter with reference to the evidence and also the subsequent payment, issued recovery order dated 19.09.2006 in O.A.No.766/2002 for recovery of the sum of Rs.23,33,912/- deducting a sum of Rs.6,25,000/- paid by the petitioner with interest 15.81% per annum with quarterly rests from 08.06.1998 till the date of realization. Further, it is stated that the petitioner is not entitled for any benefits under the OTS scheme, as it had already committed default in paying the balance amount under the OTS offer of 2003. The petitioner is not entitled for any of the concessions under Reserve Bank of India OTS Scheme 2002, as it committed default in paying the amounts agreed under the said scheme and they will be treated as willful defaulters under the said scheme. It is also stated that the respondents are entitled to proceed with the recovery of money as per the recovery order dated 19.09.2006 in O.A.No.766/2002 and the petitioner is liable

to pay the same. It is also stated that the proceedings issued under Section 8 (1) of the Security Interest (Enforcement) Rules 2002 are lawful and valid. Further, it is stated that the facts of Durga Industries, Mangalagiri, Guntur District are not similar to the facts of the present petition and the same cannot be applied to the present case and that there is no discrimination against the petitioner and the respondents have not violated Article 14 of the Constitution of India. It is also stated that the possession notice dated 05.04.2007 is lawfully issued and the same is in accordance with law. Further, the debt is of the year 1996 and already much delay is caused in realizing the debt from the petitioner and if any stay is granted at this stage, the respondents will suffer grave and irreparable loss as huge debt is to be recovered. The order made in O.A.No.766 of 2002 also is placed before this Court.

7. The main grievance ventilated by the writ petitioner is that when in similar cases, the O.T.S. had been considered; non-consideration of its case in proper perspective in relation to giving benefit under the said scheme is discriminatory.

8. In the light of the specific stand taken in the affidavit filed in support of the writ petition and also the specific stand taken in the counter-affidavit of the respondents, this Court is of the considered opinion that no positive directions as such can be given in this regard. It is for the respondents to look into the grievances of the petitioner and take an appropriate decision in this regard as per the guidelines, rules or circulars governing the field. Except making this observation, no further relief can be granted in the present writ petition.

9. With the above observation, the writ petition shall stand dismissed. No order as to costs.

(**P.S.NARAYANA,J)**

03-12-2007.
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